R.E. No. 1193/06 Dhp.
Presented by Shri Jain
dated 25/4/06

(13)

Vf 7135

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (C.G.).

Single Bench

FA 166/06

PLAINTIFFS/APPELLANTS.

Smt. **NIRMALA DEVI MAJETHIA,** aged about 65 years, wife of Shri Jayantilal Majethia, resident of Geeta Nagar, Choube Colony, Raipur, Tahsil and District Raipur(CG.)

VERSUS.

DEFENDANTS/RESPONDENTS.

(1) **GANPAT @ GANGA PRASAD,** aged about 26 years son of Maksudan Dahariya;

(2) **Smt. PARAG BAI** aged about 57 years, Widow of Late Shri Maksudan Dahariya,

Both resident of Village Dumartalab, near Police, Station Ama Naka,Raipur, Tahsil and District Raipur.

(3) **STATE OF C.G.**, through Collector,Raipur.

(4) Smt.**USHA KHATWANI** Wife of Girdhari Khatwani, Near, Mill of M/s. Jashan and Harimal, across Telghani Naka, over bridge, Raipur, Tahsil and District Raipur, C.G.

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FIRST CIVIL APPEAL UNDER SECTION 96 OF CODE OF CIVIL PROCEDURE VALUED AT RS. 60,800/- COURT FEES PAID RS. 7120/-.

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक F.A.No.166/2006 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	27.02.2007 Shri G.D.Vasvani, Counsel for the plaintiff/appellant. Heard on admission. The appellant/plaintiff is aggrieved by the judgment and decree dated 28.02.2006 passed by 9th Additional District Judge, Raipur in Civil Suit No. 41-A of 2004 whereby specific performance of contract dated 25.03.1998 by the respondents/defendants No.1 & 2 to sell the suit land to the appellant/plaintiff was refused. 2. The respondents / defendants No.1 & 2 did not file written statement and were ex parte in the lower Court. 3. During the pendency of the suit, the respondents/defendants No.1 & 2 sold the suit lands i.e. land Kh.No.490/1 area 0.129 hectares and Kh.No.299 area 0.129 hectares situated in village Dumartalab, Patwari Halka Number 104, revenue circle Raipur, Tahsil and District Raipur, to the respondent / defendant No.4 by a registered sale deed. Consequently, respondent No.4 was also added as a defendant.	

P.T.O.

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मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

4. The appellant/plaintiff did not examine herself. The sole witness examined by her was Jayantilal, her husband in whose favour she had executed a general power of attorney. The agreement dated 25.03.1998 contained the following conditions:

A) The land would be demarcated by the defendants and if upon such measurement the land was found to be less than the land agreed to be sold, the consideration would be suitably reduced;

B) The appellant/plaintiff shall pay the remaining consideration within one year from the date of agreement and get a sale deed registered in her favour.

C) The Vendor shall obtain permission under Section 26 of the Urban Land (Ceiling and Regulation) Act to sell the lands before conveying title in favour of the appellant.

D) It was also stated in the agreement dated 25.03.1998 that the vendor had delivered the possession of the suit land to the appellant / plaintiff.

5. The respondent No.4 resisted the suit pleading that prior to the agreement dated 25.03.1998, the defendants/respondents No.1 & 2 had, on 01.10.1996, agreed to sell agricultural lands including the suit land to her and in pursuance to such agreement a registered sale deed was

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मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

executed by the defendants No.1 & 2 in favour of the respondent/defendant No.4.

6. The appellant/plaintiff did not enter the witness box and examined the sole witness Jayantilal P.W.1 i.e. her husband. The respondent/defendant No.4 examined herself and Mannsingh Sahu as D.W.2.

7. The learned 9th Additional District Judge refused to grant specific performance of contract on the following grounds and ordered refund of the advance of Rs.20,000/- paid by the plaintiff with interest at the rate of 6% from 25.03.1998 till payment.

i) that the plaintiff had failed to prove readiness and willingness to perform her part of the contract;

ii) no evidence was led to show as to on what dates did the plaintiff or her husband asked the defendants to execute the registered sale deed;

iii) if the defendants No.1 & 2 had failed to execute the registered sale deed despite repeated requests by the husband of the plaintiff within a period of one year, there is no explanation as to why for the first time a registered notice was sent to the defendants No.1 & 2

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मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -५-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

by the plaintiff on 06.07.2000 i.e. after two years and three months from the date of agreement whereas under the agreement the sale deed was to be got executed within one year;

iv) Although the agreement mentioned delivery of possession to the plaintiff, yet the testimony of Jayantilal P.W.1 did not corroborate the above fact;

v) the plaintiff led no evidence to show that within one year from the date of agreement she had the necessary funds to pay the remaining consideration to the defendants No.1 & 2;

vi) no evidence was led to show as to when did the plaintiff asked the defendants No.1 & 2 to get the suit land demarcated and measured; and

vii) if as per agreement the possession of the suit land was delivered to the plaintiff she ought to have got the same demarcated which was not done by her.

8. It is well settled that under Section 20 of the Specific Relief Act, 1963, the jurisdiction to decree specific performance is discretionary and the Court is not bound to grant such relief merely because it is lawful to do so. At the same time, the discretion to refuse specific performance should not be arbitrary but guided by sound judicial principles. In the present case, there is not even any iota of evidence on record to show that the

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मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

plaintiff had the necessary funds to pay the remaining consideration to the defendants within one year from the date of agreement i.e. 25.03.1998. The plaintiff did not enter the witness box. No explanation was given as to why the plaintiff served a notice upon the defendants as late as on 06.07.2000 i.e. after two years and three months from the date of agreement whereas under the agreement dated 25.03.1998 the registered sale deed was got to be executed within one year. The sole witness Jayantilal P.W.1 did not state that the plaintiff was put in possession of the suit lands thereby rendering condition No.6 of the agreement totally false. The condition of measurement and demarcation also goes to show that the area of land agreed to be sold and consideration to be paid could vary. No specific evidence was led by the plaintiff to show when did she or her husband Jayantilal ask the defendants No.1 & 2 to get the suit land measured and demarcated within one year of the agreement. No independent witness was examined by the plaintiff. In view of the aforesaid circumstances, I am in complete agreement with the reasons given by the learned 9th Additional District Judge, Raipur for refusing the relief of specific performance of contract.

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मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -6-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	9. In the light of the aforesaid circumstances and the nature of evidence led by the plaintiff not disclosing readiness and willingness on the part of the plaintiff to perform her part of the contract within a period of one year from the date of the agreement and also considering the fact that the defendants No.1 & 2 have sold the suit land along with other lands to the defendant No.4 through a registered sale deed, I am of the considered opinion that performance of the contract now would involve some hardship on the defendant which he did not foresee whereas its non-performance would involve no such hardship on the plaintiff. The impugned judgment and decree refusing specific performance of contract dated 25.03.1998 is thus impeccable and does not call for any interference. 10. In this view of the matter, application I.A.No.478 of 2007 under Order 1 Rule 10 C.P.C. for impleading Narayan Das and Smt. Mithila Devi Sharma who along with the defendant No.4 had purchased lands from the defendants No.1 & 2 as also the application I.A.No.479 of 2007 for adding the relief of re-conveyance of the sale deed in favour of the plaintiff deserve to be dismissed.	

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(44)

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश - 4 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	11. For the foregoing reasons, this appeal being devoid of any merit is dismissed at the stage of admission. I.A.No. 478 of 2007 and I.A.No.479 of 2007 also stand dismissed. There shall be no order as to costs. **Sd/-** **Dilip Raosaheb Deshmukh** **Judge**	

Anjani

P.T.O.